

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1725 of 1998

with

CIVIL REVISION APPLICATION No 1727 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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PRAVINKUMAR RAMANIKLAL PANDYA

Versus

MAVAJIBHAI JERAM & SANTOKBEN SAVAJI SMARAK TRUST

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Appearance:

MR DHARMESH V SHAH for Petitioner

MR SANDIP N. BHATT for Opponents

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CORAM : MR.JUSTICE J.R.VORA

Date of decision: 12/07/1999

#### COMMON ORAL JUDGEMENT

These revision applications arise from a judgment and decree passed by the District Court at Rajkot by the Assistant Judge in Regular Civil Appeal Nos.9//93, 10/93 and 11/93.

2. As per the brief facts, the present petitioner in both the revision applications was original defendant and present opponent-trust filed two Civil Suits before Small

Cause Court at Rajkot, being numbered as Civil Suit No.33/86 and Civil Suit No.98/86. The suit premises mentioned in both the suits were in 1979 let to the tenant which comprising of one shop and the other property comprising of shed, osari, bathroom etc., as described in the respective complaints. Landlord filed Civil Suit No.33/86 for the shed and other property and Civil Suit No.98/86 for the shop property. Since the parties were the same, both the suits were consolidated. Before that one standard rent application filed by the present petitioner numbered as Civil Misc. Appln. No.78/84, regarding the same property was pending before the same court. Civil Misc. Appln. No.78/84 came to be filed on 31st January, 1984. Civil Suit No.33/86 came to be filed on 15th February, 1986. Civil Suit No.98/86 came to be filed on 23rd April, 1986. As per the case of the landlord, the tenant was in arrears of rent and notice in Civil Suit No.33/86, dated 4.2.84, was issued to the tenant under sec.12(2) of the Bombay Rent Act, which was received by the tenant on 8.2.84, and which was replied on 25.2.84, while a notice demanding the arrears for more than six months and the possession was also issued in Civil Suit No.98/86, on 9.4.84, which was received by the tenant on 11.4.84, and the replied given by the tenant on 28.4.84.

3. One more fact is required to be noted here. For this very premises earlier two Civil Misc. Applications for deciding the standard rent came to be filed by the tenant-present appellant, which was numbered as Civil Misc. Appln. No.357/79 and Civil Misc. Appln. No.358/79. C.M.A. No.358/79 was pertaining to the suit property of Civil Suit No.98/86, and C.M.A. No.357/79 was pertaining to the suit property comprising in Civil Suit No.33/86. In the standard rent applications, both the parties arrived at the compromise on 11th June, 1979, upon which the court passed the order on 17th June, 1979, fixing the standard rent of Rs.125/- p.m. exclusive of taxes for suit shop and Rs.675/- exclusive of taxes for the other properties.

4. In both the above mentioned two suits bearing Civil Suit No.33/86 & Civil Suit No.98/86 and C.M.A. No.78/84 filed by the tenant earlier to filing of these suits were tried together by the trial court. The trial court came to believe that the tenant was in arrears for more than six months at the time of filing of the suit and at the time of deciding the suit. Regarding the standard rent application C.M.A.No.78/84, the trial court held that earlier in C.M.A. No.358/79 and C.M.A. No.357/79, the competent court fixed the standard rent of

the suit premises on the compromise of the parties as mentioned above and, therefore, the dispute of the standard rent raised by the tenant in C.M.A.No.78/84 subsequently and second time was not genuine and bonafide and hence, the trial court held that the tenant was neither protected under sec.12(3)(a) or sec.12(3)(b) of the Bombay Rent Act. This decision was challenged by the tenant by way of an appeal to the District Court, by filing Reg. Civil Appeals Nos.9/93, 10/93 and 11/93. R.C.A. No.10/93 was pertaining to the standard rent application while R.C.A. Nos.9/93 and 11/93 was pertaining to the suits. The Appellate Court considered the arguments of both the sides and came to believe that the tenant was in arrears of rent at the time of filing of the suit and thereafter at the time of the decision of the suit also. The Appellate Court held with regard to R.C.A. No.10/93 that the view of the trial court was correct that once the dispute of standard rent is decided between the parties, which was submitted before the court and court passed the orders regarding fixing of the standard rent and, therefore, the dispute of the standard rent was not bonafide. The appellate court dismissed all the three appeals. So far as R.C.A. No.10/93 is concerned which is pertaining to the standard rent application, tenant filed a Civil Revision Application No.1729 of 1998, before this court which came to be decided by the order dated 9.4.99. This court observed that this is the revision under sec.29(2) of the Bombay Rent Act, challenging the order passed in appeal No.10/93, which arose from Civil Misc. Appln. No.78/84. Further this court held that admittedly the said Civil Misc. Application was for determination of standard rent, under section 11 of the Bombay Rent Act, and admittedly the decision in such an application is not appealable. Thus, the dismissal of the said appeal No.10/93, is sustainable even on the ground that the said appeal was incompetent and hence, the revision was dismissed. Therefore by the decision of this court in above C.R.A. No.1729/98 the view expressed by the trial court regarding standard rent became final. The trial court took the view that the dispute of standard rent was decided earlier between the parties and the filing of the next application by raising the dispute of standard rent was not bonafide one. This would go to suggest that there was no bonafide dispute of standard rent between the parties at the time of filing of the suits.

5. In these revision applications, Mr. Dharmesh Shah on behalf of petitioner has vehemently urged that, the tenant came to know about the fixation of standard rent only on 9.4.99 when the High Court passed the order

in Civil Rev. Appln. No.1729 of 1998 and, therefore, the tenant was protected under sec.12(3)(a) and sec.12(3)(b) of the Bombay Rent Act. Further it was vehemently urged that, so far as the rent is concerned, the tenant has deposited all the arrears pending the appeal in the District Court and therefore also on that ground the tenant is required to be protected.

6. Both these arguments of Mr.Shah, cannot be upheld for the simple reasons that the second standard rent application numbered as C.M.A. No.78/84 was rejected because it was held not to be bonafide because once the standard rent was properly fixed between the parties and the revision application mentioned above was dismissed by the High Court, the clear consequence of these circumstances would be that the tenant knew that what was the standard rent at the time of filing the suits. Even then he raised dispute regarding standard rent which was not bonafide. If the dispute is not bonafide then it is no dispute at all. The tenant was in arrears admittedly for more than six months at the time of the filing of the suit, the tenant neither paid the arrears of rent at the time of filing of the suit nor at the first day of hearing nor during pendency of suit nor at the decision of the suits. Thus tenant has lost the protection under sec.12(3)(a) and sec.12(3)(b). Now it is an admitted fact that taxes and permitted increases are the part of rent, and hence the case will come out of the scope of the sec.13(1)(a) and necessarily fall in sec.13(1)(b). The tenant accordingly as said before neither paid rent at the first hearing nor paid rent during pendency of suits, till disposal, even if on an application of the landlord, the trial court ordered to pay interim rent which was also not paid. Even defendant tenant though defence was struck off and subsequently permitted to defend the suit, never entered in the witness box nor adduce any evidence and as such the tenant could not be protected from passing of eviction decree. Decisions of both the courts below are according to law and requires no interference at all.

7. At this juncture, one more argument of Mr. Shah is requires to be referred and replied. The Counsel was heard to say that tenant could know only by a decision of this court in C.R.A. No.1729/98 on 9.4.99 that his dispute was not bonafide. The dispute of standard rent was malafide is the final verdict in the matter between parties. When a court pronounces that a dispute was malafide, it necessarily connotes the meaning that the tenant knew at the time of raising dispute that the dispute is not bonafide. Words 'bonafide' or 'malafide'

suggest some intention which in turn refers to proposition that a person acts with full knowledge of some facts. When it is said that the dispute of standard rent is malafide, then it necessary mean that the dispute was raised right at the time of inception with some knowledge that the action of raising of dispute of standard rent was not proper. Therefore, the tenant very well knew what was the standard rent of the premises when second time he raised the dispute. Second application for fixation of standard rent may not be barred by law but subject to limitation that the dispute must be bonafide. Particularly, with reference to the facts of this case, tenant cannot be heard to say that he came to know about his dispute being not bonafide from the decision of this court on 9.4.99 in C.R.A. No.1729/98, and that he is still protected because during pendency of first appeal before District Court he has paid all the arrears of rent. Though on that score also the say of the tenant is not acceptable because standard rent in this case includes rent and taxes and permitted increases. The tenant might have paid rent but admittedly he has not paid huge arrears of taxes till today and the tenant, therefore, is the tenant in arrears even today also.

8. In this view of the matter, the tenant loses the protection under sec.12(3)(b) of the Bombay Rent Act, and decree passed by both the courts below requires no interference at all. These revision applications are, therefore, fails and dismissed. Notices are discharged in both the revision applications. However, since the petitioner intends to approach the higher forum, the decree in question shall not be executed by the opponents-landlord till 31st August, 1999. Record and Proceedings called for in both the applications be sent back to the court below immediately.

(J.R. Vora, J.)

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